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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,816	12/27/2001	Earle H. Sherrod	16,876	1500

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EXAMINER

SINGH, ARTI R

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/034,816	Applicant(s) SHERROD ET AL.	
	Examiner Ms. Arti Singh	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) ____ is/are pending in the application.
 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1 & 2. 6) ☐ Other:

DETAILED ACTION

1. Applicant's election with traverse of Group I, claims 1-10 in Paper dated 09/08/03 is acknowledged. The traversal is on the ground(s) that the field of search would be co-extensive and fails to appreciate how the subcombination could have a separate utility and not the combination. This is not found persuasive because the additional layer could be searched in other area outside of 442, and the Examiner believes that the if deemed allowable they could hold separate patents, furthermore, with regard to the preambular language of claims 18-20 must be given weight too.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 & 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Crawley et al. (USPN 5,948,707). Crawley et al disclose a waterproof, water vapor permeable fabric material which has non-slip properties and to a method for making such material. The material comprises a waterproof, water vapor permeable film or membrane laminated to a layer of fabric. The film or membrane is preferably an ePTFE film. The opposite side of the film or membrane (the side away from the fabric layer) is provided with a discontinuous coating of an elastomeric material, which provides the non-slip properties by substantially increasing the coefficient of friction of the film or membrane layer. The elastomeric material is adequately soft to provide the necessary increase in the coefficient of friction, having an elastic modulus of less than 5.5 N/mm². The resulting fabric has a static coefficient of

friction of greater than 1.0, or greater than about 1.0, on the exposed film or membrane side which is generally the side facing a wearer. In an alternative embodiment, the discontinuous coating of elastomer may be provided on the exterior surface of the fabric side of the film and fabric laminate, whereby this fabric surface also has a static coefficient of friction of greater than 1.0, or greater than about 1.0. The discontinuous coating preferably forms projections above the surface of the film or membrane substrate, or alternatively the fabric substrate. It leaves a significant portion of the substrate surface uncoated by the elastomeric material. This uncoated portion of the inventive material therefore remains both waterproof and water vapor permeable. The coated portion of the inventive material may also be water vapor permeable to a lesser extent. The discontinuous coating of elastomeric material on the surface of the film or membrane which results in the non-slip properties of the inventive material is the result of a surface treatment preferably applied to the film or membrane on the side opposing the fabric layer (the inner surface, e.g., the side of the membrane intended to contact or face toward the skin of a wearer). The surface treatment involves the application of the elastomeric material applied in a pattern, preferably a raised pattern, to that side of the membrane. Alternatively, as noted above, the dots may be applied to the outer surface of the fabric (opposite the film side). The pattern may be in the form of small domes or dots at spaced intervals or may be intersecting lines in various patterns such as a grid pattern applied to the one surface of the membrane or alternatively to the fabric surface. The pattern preferably comprises silicone dots applied by a screening or gravure process prior to forming the layered or laminate assembly. The film or membrane is preferably a hydrophobic film layer having a water vapor transmission rate exceeding 1,000 gms/m²/day (columns 3 and 4).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crawley et al. (USPN 5,948,707). Crawley et al. Teaches what it is set forth above but does not disclose the dimensions or physical limitations required to form the desired product. However it has been held that where the general conditions of the claim are met merely changing the size and/or shape of the article is well within the purview of one skilled in the art dependant upon the intended use of the claimed article. Further Applicant and patentee are making the same types of absorbent composites.

With regard to the limitation of the composite formed or the drape stiffness of the composite, to this the Examiner takes the stance that although not claimed by Applicant, but Crawley et al teach the use of the same chemical and structural requirement set forth by Applicant and thus it would be reasonable to presume that the property limitations of drape stiffness would inherently if not obviate the physical properties of the present invention, since both inventions are comprised of a non-adhesive skid resistant coating having an absorbent layer and a vapor permeable liquid impermeable bottomsheets. Furthermore, as no other structural or chemical features are claimed which may distinguish the present invention from that of Crawley et al's invention, the presently claimed physical properties drape stiffness would obviously have been present once the Crawley et al. product was provided. Note In re Best, 195 USPQ 433, footnote 4 (CCPA 1977).

Art Unit: 1771

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 703-305-0291. The examiner can normally be reached on M-F 9-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Ms. Arti Singh
Primary Examiner
Art Unit 1771

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